

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In the matter of: J.T.,)	
Petitioner)	
)	
and)	CAUSE NO. 091002-64
)	
The Indiana High School Athletic Association (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a seventeen-year-old junior (d/o/b June 15, 1992) currently attending Pike High School, a public high school in the Metropolitan School District of Pike Township. He resides with his family in Zionsville, Indiana. For the 2007-2008 and 2008-2009 school years, he attended Zionsville High School. While at Zionsville High School, the Petitioner participated in freshman football and baseball and junior varsity football and golf.

In June 2009, the Petitioner applied for admission to and was accepted for enrollment at Pike High School for the 2009-2010 school year. The Petitioner's parent completed the student's section of the *IHSAA Transfer Report* ("*Transfer Report*") indicating that the transfer was sought in anticipation of the family's move to Pike Township. Due to a delay and some confusion in the processing of this *Transfer Report*, the parent completed and resubmitted the *Transfer Report* on August 12, 2009, citing the same reason for transfer and requesting consideration of a Principal's hardship waiver for full eligibility.

Pike completed the receiving school's section of the *Transfer Report* on August 12, 2009, confirming the parent's reason for transfer and recommending full eligibility. Pike signed the Hardship Verification. On August 14, 2009, Zionsville completed its portion of the *Transfer Report*, indicating that the transfer was neither for athletic reasons nor the result of undue influence and recommended limited eligibility. Zionsville did not sign the Hardship Verification.

On August 14, 2009, the Petitioner, through Pike, submitted a request for full athletic eligibility following the transfer from Zionsville. Bobby Cox, IHSAA Assistant Commissioner, conducted an investigation on that date and ruled that the Petitioner had limited eligibility. On August 25,

2009, Blake Ress, IHSAA Commissioner, sent a letter to the Petitioner's parents affirming the limited eligibility decision.

The Petitioner sought review of the Commissioner's decision by Respondent's Review Committee. The Review Committee conducted its review on September 18, 2009, and issued its decision on September 30, 2009, upholding but modifying the Commissioner's decision. The Review Committee ruled that the Petitioner had limited eligibility at Pike, but only through the completion of the 2009 football season, at which time he would have full eligibility.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, without counsel, appealed to the Indiana Case Review Panel¹ ("CRP") on October 2, 2009. Petitioner requested an expedited hearing and that the hearing be closed to the public. On October 5, 2009, the parties were notified of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. Hearing was set for October 9, 2009, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On October 9, 2009, the CRP convened.² Petitioner and his parents appeared in person. Respondent appeared by counsel. Prior to the hearing, Petitioner submitted one exhibit. Copies were made and provided to Respondent and members of the CRP. Respondent objected on the basis of hearsay. The CRP admitted the document over Respondent's objection, noting that the resulting order may not be based solely upon the hearsay evidence.³

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the Case Review Panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner is a seventeen-year-old junior (d/o/b June 15, 1992) currently attending Pike High School, a public high school in the Metropolitan School District of Pike Township. He resides with his family in Zionsville, Indiana.

¹ The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or his designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

² Five members were present: Joan L. Keller, Chair; Earl Smith; Christi L. Bastnagel; Matthew Rager; and Brenda Sebastian.

³ I.C. 4-21.5-3-26(a).

2. Prior to enrolling at Pike, the Petitioner attended Zionsville High School for his freshman and sophomore years.
3. In June 2009 the Petitioner applied for and was allowed to enroll at Pike. At the time of enrollment, the Petitioner's parent completed the parent's section of the IHSAA Transfer Report ("Transfer Report").
4. Zionsville received the Transfer Report in mid-June 2009. The Zionsville Athletic Director's two attempts to contact the parents were unsuccessful.
5. On August 12, 2009, the Petitioner's parent resubmitted the Transfer Report, citing an anticipated move to Pike Township as the reason for the transfer, noting that this was a Rule 19-6.2⁴ transfer and affirming that the Petitioner was seeking a hardship exception.
6. Pike completed the receiving school's section of the Transfer Report on August 12, 2009, recommending full eligibility, citing the exception to limited eligibility under Rule 17-8.5. Pike signed the "Hardship Verification" indicating that the transfer is in the best interest of the Petitioner and that there were no athletic motives surrounding the transfer.
7. On August 14, 2009, Zionsville completed the sending school's section of the Transfer Report, indicating that the transfer was not due to athletic reasons or undue influence, and recommended limited eligibility. Zionsville recommended that Petitioner should have limited eligibility under Rule 19-6.2 and did not sign the "Hardship Verification."
8. On August 14, 2009, the Petitioner through Pike, submitted a request to the IHSAA for full athletic eligibility for his transfer to Pike. On that same date, IHSAA Assistant Commissioner Bobby Cox granted the Petitioner limited eligibility pursuant to Rule 19-6.2. On August 25, 2009, the IHSAA Commissioner affirmed the determination that the Petitioner had limited eligibility under Rule 19-6.2.
9. The Petitioner appealed to the IHSAA Review Committee, seeking reversal of the limited eligibility ruling under the hardship exception in Rule 17-8.1.
10. The Commissioner's determination was modified by the IHSAA Review Committee who ruled that the Petitioner would have limited eligibility only through the 2009 football season, after which the Petitioner would have full eligibility as long as all other eligibility criteria were satisfied.
11. The bases of Petitioner's hardship claim are various real and perceived actions by other students, parents, school staff, and members of the community that began after an incident at the Petitioner's home in June 2007 and have continued since that time. Although some of the actions could be characterized as friendly teasing and ribbing, other actions were more

⁴ Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. (All references are to the 2009-2010 by-laws of Respondent.)

direct and pointed, having a negative effect on the Petitioner. As a result of those actions, the Petitioner sought to enroll in a nonpublic school at the beginning of the 2007-2008 and 2008-2009 school years. He was unable to enroll due to the family's financial constraints. At one point during this time, the Petitioner also considered moving to Arizona to reside with his uncle as a way to transfer out of Zionsville, but the Petitioner's parents did not believe this to be a feasible alternative.

12. Respondent asserts that the Petitioner's hardship claim must fail because the transfer to Pike is not outside the Petitioner's control and that any actions that may have been directed at the Petitioner over the past two years do not constitute a compelling reason for the transfer.
13. The Petitioner's limited eligibility allows him to participate in interscholastic athletics at the junior varsity level during the 2009 football season, after which he will have full eligibility for participation in interscholastic athletics at Pike for the remainder of the 2009-2010 school year.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel ("CRP") has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent and is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination.
2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. Rule 19-6.2 permits limited eligibility for a student who transfers to a new district without a corresponding change of residence to the new district by the student's parents. The Petitioner is eligible for limited eligibility pursuant to this Rule.

4. Rule 17-8.5 provides that, despite the limitation of Rule 19-6, a student may be granted full eligibility if the student continues to reside with his parents, if the transfer is in the best interest of the student and is not athletically motivated, and if the sending and receiving schools affirm the student's best interest and lack of athletic related motives. The Petitioner continues to reside with his parents and has established to the CRP's satisfaction that the transfer is in his best interest and is not athletically motivated. Both the sending and receiving schools have affirmed that there are no athletic related motives surrounding the transfer.
5. Based on the foregoing, the Petitioner's limited eligibility under Rule 19-6.2 is set aside. Under Rule 17-8.5, the Petitioner is entitled to full eligibility.

ORDER

The decision of the Indiana High School Athletic Association to limit the Petitioner's eligibility at Pike for the duration of the 2009 football season and grant full eligibility thereafter is modified. The Petitioner shall have full eligibility, provided he meets all other eligibility rules, effective immediately. This was determined by a vote of 5 - 0.

DATE: October 15, 2009

/s/ Joan L. Keller
Joan L. Keller, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.